

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE MEDICAL PROTECTIVE COMPANY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:06CV01639 ERW
)	
JAMES E. BUBENIK, D.M.D., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court on a Joint Motion to Vacate Costs Only as to Johnston Defendants [doc. #198]. The Joint Motion was filed by The Medical Protective Company ("Plaintiff") and Joseph C. Johnston, in his individual capacity and as legal guardian of Mary Johnston (collectively, "Johnston Defendants"). James E. Bubenik, D.M.D. and James E. Bubenik, D.M.D., P.C. (collectively, "Bubenik Defendants") oppose the Joint Motion. This Court held a hearing on April 7, 2010, and heard arguments from the Parties on the pending Joint Motion.

On May 8, 2009, this Court issued a Memorandum and Order which, in part, granted costs in favor of Plaintiff and against all Defendants, in the amount of \$4,887.93. Plaintiff and the Johnston Defendants have now filed the pending Joint Motion, requesting that the Court vacate its previous Order granting costs, but only as to the Johnston Defendants. This would leave intact the Court's previous Order as to the Bubenik Defendants. The Bubenik Defendants argue that it would be unjust to require them to pay all of the costs associated with the trial in this case.

The Court disagrees. As set forth by Plaintiff in its Reply Brief, this Court granted Plaintiff costs against all Defendants, and Plaintiff has the right to determine which of the Defendants, if any, to enforce the judgment against. Thus, the Court will grant the pending Joint Motion. The Court's May 8, 2009 Order granting costs to Plaintiff against all Defendants is vacated only as to the Johnston Defendants.

Accordingly,

IT IS HEREBY ORDERED that the Joint Motion to Vacate Costs Only as to Johnston Defendants [doc. #198] is **GRANTED**.

Dated this 8th Day of April, 2010.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE